

IDENTITY AND TREATY STATUS

of the

NOOKSACK INDIANS

BY

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28 NOVEMBER 1974

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Prepared for: U.S. Department of
the Interior

and The Nooksack Indian
Tribe

by: Barbara Lane, Ph.D.

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IDENTITY AND TREATY STATUS OF THE NOOKSACK INDIANS

I. INTRODUCTION

There is current disagreement as to whether the Nooksack Indians were party to the Treaty of Point Elliott, January 22, 1855 (12 Stat. 927). The disagreement arises, in part, from the fact that the documentary record contains apparently conflicting evidence on this point.

The reasons for supposing that the Nooksack were not party to the treaty appear to be the following:

(1) The Nooksack are not named in the preamble of the Point Elliott treaty, nor is any Indian signatory at the close of the treaty document identified as Nooksack.

(2) The official record of the treaty proceedings contains the following entry under date of January 9, 1855

. . . . "Mr. Shaw returned from Bellingham bay having been entirely successful in engaging the Lummi & other northern bands to come in, except the Nooksahks, whose country was inaccessible from ice in the river."

[1]

The failure to name the Nooksack on the treaty document and the notation that their country was inaccessible have led some to conclude that the Nooksack were not present at the treaty ground and that they were not party to the treaty.

The Court of Claims (79 C. Cls. 530) described the Nooksack as a tribe with whom no treaty was ever made (Finding No. III) and stated (Finding No. XXV) that

"The United States endeavored to, but did not conclude or ratify treaties with the Upper Chehalis, the Muckleshoot, the Nooksack, the Chinook, and the San Juan Islands Indian tribes. . . . The above tribes have no claim growing out of treaty with the United States. . . ."

The Indian Claims Commission (3 Ind. Cl. Com. 488) similarly stated (Finding No. 12) that

"At the time the Point Elliott Treaty was negotiated the Nooksack tribe occupied lands within the territory ceded to the United States under that treaty, and the Government officials conducting the treaty negotiations recognized that the Nooksacks were a separate tribe or group of Indians who had an interest in the subject matter of that treaty. The Nooksack Tribe was not, however, a party to the treaty."

The case for non-treaty status would seem to be unequivocal were it not for the fact that Isaac I. Stevens, George Gibbs, and Michael Simmons each reported after the treaty that the Nooksack were a party to it. All three men were part of the official treaty commission which negotiated the Treaty of Point Elliott.

Stevens was then Governor of Washington Territory and ex-officio Superintendent of Indian Affairs. In the latter capacity he was charged with negotiating treaties with the Indians of Washington Territory.

Gibbs was a lawyer who served the commission as secretary and surveyor as well as ethnologist. It was Gibbs who reported the ice conditions on the Nooksack River.

Simmons was one of the first settlers in western Washington and was Indian Agent for the entire district.

The present report reviews documentary evidence from the period just prior to, during, and immediately subsequent to the treaty negotiation in order to report findings and to offer opinions as to the intentions and understandings of the treaty commission and the Indians at the time that the treaty was concluded.

Some of the documentation considered in this report appears not to have been introduced in previous litigation and/or in prior discussions relating to Nooksack treaty status.

Other materials reviewed in this report have been considered in earlier arguments with respect to Nooksack treaty status, but have not been analyzed from the perspective offered here.

It is my opinion that the present review eliminates the apparent inconsistencies in the record and supports the conclusion that the Nooksack were a party to the Treaty of Point Elliott.

II. ISAAC INGALLS STEVENS' AUTHORITY TO NEGOTIATE THE TREATY OF POINT ELLIOTT AND HIS INSTRUCTIONS RELATIVE TO THE TREATY NEGOTIATIONS

By Act of Congress of March 2, 1853 (10 Stat. 172-179), Washington Territory was separated from Oregon Territory of which it formerly had been a part. Administration of Indian Affairs for Washington Territory was by the Act vested in the Governor. When Isaac Ingalls Stevens took office March 21, 1853 as the first Governor of the newly created Washington Territory, he became simultaneously ex-officio Superintendent of Indian Affairs.

The Commissioner of Indian Affairs, George Manypenny, described the administrative authority for Indian Affairs in Washington Territory to the Honorable R. McClelland, Secretary of the Interior, in a report dated November 25, 1854.

"In New Mexico, Utah, Washington, and Minnesota, the supervision of our Indian affairs is given to the territorial executive, who by law is made the superintendent; and in Oregon, Kansas, and Nebraska, the same is confided to an independent officer, denominated the superintendent of Indian affairs."

[2]

On the day that Isaac Ingalls Stevens took office as Governor of Washington Territory, he wrote to the Commissioner of Indian Affairs to advise him that he was ready to assume his duties as Superintendent of Indian Affairs.

Washington City, March 21, 1853

Sir,

I have this day taken the oath of office as Governor of the Territory of Washington, and am now ready to enter upon my duties as Superintendent of Indian Affairs.

*Yours truly respectfully,
Your obedient servant
Isaac I. Stevens*

[3]

At the time that Washington Territory was created, no treaties had been concluded and ratified with the Indians residing within the boundaries of the new Territory. One of the urgent requirements was to extinguish Indian title to the land in Washington Territory by the negotiation of treaties with the Indians.

Isaac Ingalls Stevens, as Superintendent of Indian Affairs for Washington Territory, was charged with the responsibility of negotiating

these treaties. He was advised of this duty in a letter sent to him by the Acting Commissioner of Indian Affairs, Charles E. Mix, under date of August 30, 1854. The full text of the letter is appended to this report and has been introduced previously as Exhibit PL-1 in U.S. v. Washington, Civil No. 9213, W.D. Washington.

The section charging Stevens with responsibility for negotiating treaties with the Indians follows:

"By requisition of this Office, of the 12th instant, the sum of \$10,000 will be placed in your hands, or remitted to you from the appropriation of \$45,000 made by the act of Congress approved July 31st 1854, "for expenses of negotiating treaties with and making presents of goods and provisions to Indian Tribes in the Territory of Washington.

It is the expectation of the Department that the sum appropriated, will prove sufficient to defray all expenses incurred in and incidental to making conventional arrangements designed to be permanent, with all the Tribes and fragments of Tribes within your Superintendency, by which the United States will extinguish their claim of title to all the lands within the Territory, excepting such limited districts as it may be necessary to assign them for their occupancy in future; and I have now to inform you that you have been designated by the President as the Officer of the Indian Department to conduct the negotiations and conclude the treaties of amity and acquisition that are thus provided for."

[4]

The foregoing section also spells out certain intentions of the United States in treating with the Indians in Washington Territory. The agreements were intended to be permanent. They were meant to include all the Indians so that Indian title to all lands in the Territory would be extinguished, excepting those lands reserved for Indian occupancy.

Stevens was further instructed to unite the numerous Indian bands in the Territory into a few large tribes, hopefully six or eight

for the entire Territory. If possible, he was to negotiate six or less treaties which would include all of the Indians. The treaties were to provide for the consolidation of separate bands and tribes on a single reservation.

"In concluding articles of agreement and convention with the Indian Tribes in Washington Territory, you will endeavor to unite the numerous bands and fragments of tribes into tribes, and provide for the concentration of one or more of such tribes upon the reservations which may be set apart for their future homes.

The formation of distinct negotiations with each of the forty or fifty separate bands of Indians in Washington Territory, would be as likely to promote the best interests of the White settlers or of the Indians, as if the latter could be concentrated on a limited number of reservations, or on contiguous reservations in a limited number of districts of country apart from the settlements of the Whites.

*.
This suggestion you will regard particularly if you are unable to effect the combination of all the Bands into six or eight Tribes, or to arrange half a dozen treaties or less, so that every one of the tribes shall be a party to one of them."*

[5]

In the same letter of instructions, Stevens was requested to submit to the Commissioner of Indian Affairs, a map showing the location and territories of the various Indian tribes and bands. As treaties were concluded with them, Stevens was to report on the same indicating the location of the reserved lands provided for in the treaties. He was also to indicate the Indians party to the various treaties.

"You will at your earliest convenience, furnish to this Office a Skeleton Map of Washington Territory, showing the location of the different tribes and bands, and the boundaries of the regions respectively claimed by each; and as treaties are concluded from time to time, in your reports accompanying them, furnish a description of the reservation provided for the occupation of the Indians, with such precision, that it may be marked on a map here."

[6]

The intent of the United States, as laid out in the instructions to Stevens, was clearly to treat with all the Indians in the Territory. For purposes of treaty-making, the numerous bands were to be consolidated into a few large tribes and these were to be concentrated on a few reservations.

III. STEVENS' COMPLIANCE WITH THE INSTRUCTIONS RELATIVE TO TREATIES

In compliance with the instructions issued to him, Governor Stevens initiated steps to carry out the intent of the United States. In December 1854, he organized a treaty commission which drafted a master plan for treaties with all Indians of the Territory. [7]

Immediately thereafter, the treaty commission made a whirlwind circuit of the western portion of the Territory and in rapid succession concluded four treaties. The treaties, the places and the dates at which they were concluded, and the numbers of Indians reported to have been included in each are shown below.

<u>Treaty</u>	<u>Date</u>	<u>Indians</u>
Treaty of Medicine Creek	December 26, 1854	1200
Treaty of Point Elliott	January 22, 1855	4992
Treaty of Point No Point	January 25, 1855	1316
Treaty of Neah Bay	January 31, 1855	596

[8]

The commission attempted to conclude a fifth treaty, intended to include all the remaining Indians in Washington Territory west of the Cascade Mountains, in February 1855.

A treaty council was held with representatives of the Quinault, Chehalis, Cowlitz, and Chinook. The negotiations were aborted by Stevens when he was unable to secure compliance with his plan to place all the Indians living south of the Makah along the Pacific Coast and along rivers draining into the Pacific Ocean on a single reservation in Quinault territory.

Stevens later signed a treaty with the Quinault and the Quileute. This is known as the Treaty of Olympia. Apparently he never concluded treaties with the Cowlitz, Chinook, and Chehalis.

It is significant that Stevens freely and frequently referred to the fact that he had not treated with the Cowlitz, Chinook, and Chehalis but never asserted that he had not treated with the Nooksack. He reported officially on several occasions that he had treated with all Indians in the Territory west of the Cascades except the Cowlitz, Chinook, and Chehalis.

On August 30, 1855 Stevens wrote to the Commissioner of Indian Affairs, George W. Manypenny, relative to his prospective treaty meetings with the Pend d'Oreille, Coeur d'Alene, Spokane, and Colville Indians in the eastern portion of the Territory. Stevens reported from Fort Benton

"Col. Crosbie is likewise charged with the duty of proceeding to Vancouver and Olympia to bring the funds needed on the Spokane for my operations East of the Cascades the present season and for information to guide me as to the most judicious course to be pursued in making Treaties with the few small bands on the Columbia River and on the waters

of the Cowlitz and Chehalis who, if I succeed with the Tribes above enumerated, will be the only Indians in the Territory with whom treaties will remain to be made."

(emphasis added)

[9]

The above was written six months after the Treaty of Point Elliott.

Nearly two years after the Fort Benton letter, Stevens again wrote to Manypenny that he had concluded treaties with all the Indians in western Washington except for the Cowlitz, Chinook, and Chehalis. On April 30, 1857 Stevens sent the Commissioner of Indian Affairs a map showing Indian locations in Washington. The map, which has been introduced previously as Exhibit PL-66 in U.S. v. Washington, Civil No. 9213, W. D. Washington, contained a tabular statement of treaties concluded, Indian parties thereto, and reservations provided. The table included the numbers of Indians party to each of the treaties and also the names and numbers of those tribes not yet parties to any treaty.

The tribes west of the Cascade Mountains not party to any treaty were listed as follows:

Tribes with whom	Lower Chehalis	217
treaties have not	Upper Chehalis	216
been made	Cowlitz & Tiatnapan	240
	Lower Chinooks	112
	Upper Chinooks	330

1115

The total number of Indians west of the Cascade Mountains is given as 9712 at one place on the map. At another place it is given as 9722. The second figure appears to be in error. The first figure correctly reflects the sum of the individual figures listed elsewhere

on the table. The incorrect figure appears in the following section extracted from the tabular statement:

Total number of Indians west of the Cascade Mountains	9722
Number with whom treaties have been made	8597
Number with whom treaties have yet to be made	1115

If the correct figure, 9712, were substituted above, the number of Indians west of the Cascade Mountains with whom treaties have been made plus the number with whom treaties have yet to be made would equal the total 9712.

Further, it will be seen that the total not yet treated with, 1115, agrees with the total shown earlier to represent the Cowlitz, Chehalis, and Chinook. Arguing by exclusion, the Nooksack and all other tribes in western Washington are included in the figure of those with whom treaties have been made.

The tabular statement on the map forwarded April 30, 1857 reiterates the statement Stevens made in his letter of August 30, 1855, that he had treated with all the Indians west of the Cascades except for the Cowlitz, Chinook, and Chehalis.

On several occasions, Stevens specifically reported that the Nooksack were a party to the Treaty of Point Elliott. They are listed as such on another section of the tabular statement contained on the map forwarded April 30, 1857.

One section of that statement contains the following information relative to the Treaty of Point Elliott:

Treaty of Point Elliott	Dwamish Suquamish and allied tribes	942
January 22, 1855	Snoqualmoo Snohomish and allied tribes	1700
	Skagits and allied tribes	1300
	Lummi Nooksahk Samish	1050
		4992

In the letter of transmittal accompanying the map, Stevens wrote:

. . . . "I can vouch for the general accuracy of the map and of the Indian statistics given in it."

[10]

Almost exactly one year before the map with tabular statement was forwarded, naming the Nooksack as a party to the Point Elliott treaty, Stevens had listed the Nooksack as a party to that treaty in another official report. The statement occurs in a report Stevens submitted to Manypenny under date of May 5, 1856. In the report Stevens set out his estimates of funds and personnel required for the Washington Superintendency for the fiscal year ending June 30, 1857. In his estimates of agents and sub-agents required, Stevens wrote:

"The force should be employed as follows

1. Sub Agent in particular charge of the Scagett, Nooksahk, and Lummi Indians, parties to the Treaty of Point Elliott"

[11]

It is clear from the foregoing that Stevens not only included the Nooksack among the tribes in western Washington that had been treated with; he specifically named them on at least two official reports as a party to the Treaty of Point Elliott. These statements were all made by Stevens after the treaty had been concluded and prior to its ratification.

The record is equally clear that prior to any of the treaty negotiations in western Washington, the Nooksack were known to the treaty commission and it was intended to include them in the negotiations. On December 10, 1854, the treaty commission met in Olympia to fix an itinerary, discuss a draft treaty, and to consider reserves to be provided under the various treaties. According to the official record, the following reserves were contemplated, among others:

<i>Probable Reserves</i>	<i>Souls</i>
5. <i>Lummy, Nooksahk, &c</i>	551
<i>One on Samish</i>	
<i>One on Lummi</i>	

[12]

To this point, several things seem incontrovertible. First, Stevens was instructed to treat with all Indians in Washington Territory. He knew of the Nooksack prior to the treaty and clearly intended to treat with them. After the treaties had been concluded in western Washington, Stevens reported that he had not treated with the Cowlitz, Chinook, and Chehalis, but he reported that the Nooksack had been a party to the Treaty of Point Elliott.

As the official representative of the United States authorized to negotiate the Indian treaties, Stevens should be the best authority as to which Indians were party to the treaties he negotiated. As noted at the outset, questions have been raised regarding Nooksack treaty status for two reasons. First, they are not named on the treaty document. Second, there is doubt that they were physically present at the treaty ground. Taken together, it has been assumed that they were not included in the treaty because they were absent when the treaty was concluded.

IV. PHYSICAL PRESENCE OF THE NOOKSACK AT THE TREATY OF POINT ELLIOTT

The suggestion that the Nooksack did not attend the council at Mukilteo, or Point Elliott, rests on a statement included in the official record of the treaty proceedings. George Gibbs, the secretary of the treaty commission reported:

"1855. January 9th Tuesday On Thursday Mr. Shaw returned from Bellingham bay having been entirely successful in engaging the Lummi & other northern bands to come in, except the Nooksahks, whose country was inaccessible from ice in the river."

[13]

The reference to Shaw's return Thursday would have to refer to the previous Thursday, that is January 4. The statement then reads that as of January 4 or shortly before there was ice on the Nooksack River.

It is unclear as to whether Shaw was unable to travel up the river to communicate with the Nooksack or whether the Nooksack at that time were unable to descend the river. In either event, the time in

question was not later than January 4.

The treaty was not signed until January 22, eighteen days later. The fact that the river was impassable as of January 4 does not necessarily preclude the arrival of the Nooksack at the treaty ground two weeks or more later.

The Lummi and other northern peoples were not noted as present until January 17.

Wednesday Jan. 17. The Lummi and some other northern bands were now in, & the Dwamish began to arrive.

[14]

It now appears that the Nooksack may have been one of those "other northern bands" referred to in the January 17 entry noted above.

The official record of the treaty proceedings from which the January 9 and January 17 excerpts are taken was kept by George Gibbs in his capacity as secretary to the treaty commission.

Gibbs also kept a private journal of his own at the same time. This journal appears not to have been referred to in earlier deliberations and litigation concerning Nooksack treaty status.

Gibbs' private journal entry for January 16, 1855 contains a census of Indians present at the treaty ground. The relevant journal page is appended to this report. Of interest here is the following:

Census at Camp Jany. 16, 1855. This afterwards corrected, and the Dwamish &c added.

. . . .	Lummi	Total	271
	Nooksahk	Total	256

[15]

The Lummi and Nooksack figures are given only as totals in contrast to the figures for the other groups which are given by age and sex. Whatever the reason for the difference in format, the Lummi and Nooksack totals appear to be an actual count, rather than an estimate.

If Gibbs' private journal is to be believed, and there appears no reason why it should not be, 256 Nooksack were present at the treaty ground six days before the treaty was signed. There is nothing in Gibbs' private papers, in the official record of the treaty proceedings, or anywhere else that I know of, to suggest that the Nooksack either left the treaty ground before January 22, or declined to sign the treaty.

Like Stevens, Gibbs later described the Nooksack as a party to the Treaty of Point Elliott. In a monograph written in 1855, although not published until 1877, Gibbs wrote as follows:

"5th. The Samish, Lummi, Nuksahk, living around Bellingham Bay and the Lummi River. The two former are salt water, the last exclusively river Indians, who as yet have had very little connection with the whites. Collectively, these might be called the Nuh-lum-mi. Tsow-its-hut was recognized as their common chief by the treaty, and a reservation made for them of an island at the forks of the river. Altogether they number 680. The languages of the Lummi, at the mouth of the river, and of the Nuksahk, a few miles higher up, differ so much as to be almost unintelligible to one another. The latter seems to approach more nearly to that of Frazer River, and, in fact, their principal intercourse is with Fort Langly and the Indians in that direction. The above tribes were also treated with at Point Elliott."

[16]

Gibbs' description of the Nooksack as distinct in language and mode of life from the Lummi and his statement that they were treated with at Point Elliott must be taken as authoritative. As a trained lawyer and as official ethnographer and secretary to the treaty commis-

sion, Gibbs was perhaps better qualified even than Stevens to know which Indians were party to the treaty.

Michael Simmons, Indian Agent for Puget Sound District and a third member of the treaty commission, also reported afterward that the Nooksack had been included in the treaty. This fact is noted in Simmons' quarterly report to Colonel I. W. Nesmith, Superintendent of Indian Affairs for Oregon and Washington Territory under date of December 31, 1857.

". . . . I merely wish to state that I think it will be necessary to alter the treaty in which the Nootsacks included, so much as to allow them to select a reservation back from the salt water. They are peculiarly a hunting people, have no sympathy in common with the salt water Indians, and in my opinion would be out of place and discontented in the location mentioned in the treaty.

[17]

The Stevens' treaty commission consisted of four men: Isaac Ingalls Stevens, who was authorized by the President to negotiate the treaties and three assistants appointed by Stevens: George Gibbs, Michael Simmons, and Frank B. Shaw.

Shaw served as interpreter to the commission. To date no record has been found as to Shaw's views on whether the Nooksack were included in the Treaty of Point Elliott.

The views of the other three members of the treaty commission are contained in the various official reports and correspondence cited. All three reported that the Nooksack were included in the treaty.

The question remains as to why the Nooksack were not mentioned on the treaty document.

V. FAILURE TO NAME THE NOOKSACK ON THE TREATY DOCUMENT

It is my opinion that the failure to name the Nooksack in the preamble of the treaty and to secure Nooksack signatories at the close of the treaty was an inadvertent omission. My reasons for arriving at this opinion are the following.

Twenty-two tribes and bands of Indians are named in the preamble of the Treaty of Point Elliott. Eighty-two Indian names are listed as signatories to the treaty, each name identified as to tribal or band affiliation. Of the 22 groups named in the preamble, only fourteen are represented in any immediately identifiable way with Indian signatories.

In other words, eight of the groups mentioned in the preamble are not mentioned among the signatory groups. In addition, fourteen of the 82 Indian signers represent a group not mentioned in the preamble, namely the Lummi.

The failure to list the Lummi in the preamble can only be explained as an oversight. A head chief was designated on the treaty for this group and fourteen names are listed as Lummi representatives at the close of the treaty document. It is a matter of record that it was intended prior to the treaty to include the Lummi, the record of proceedings shows that the Lummi took part in the negotiations, and fourteen Lummi are identified among the signatories.

If through oversight one of the largest and most important groups included in the treaty could be omitted from the preamble, then it seems likely that an upriver group with whom there had been less contact could also be overlooked.

It seems significant to me that all three of the northern groups, the Lummi, Samish, and Nooksack, were omitted from the preamble.

We noted earlier that Gibbs' private journal contains a census of Indians present at the treaty ground as of January 16, 1855. In addition to the Lummi and Nooksack already listed in that census, there is mention of Samish as well.

<i>Samish</i>	<i>Men & boys</i>	55
	<i>Women & girls</i>	58

[18]

There is nothing on record, either officially or unofficially, so far discovered which would suggest that the Samish departed the treaty ground or that they declined to sign the treaty.

It is a matter of record that the Nooksack, Lummi, and Samish were known to the treaty commission prior to the Treaty of Point Elliott, that they were referred to by the treaty commission as separate groups, and that the treaty commission intended to treat with them.

It is further recorded in Gibbs' private journal that all three groups were represented at the treaty ground.

According to Gibbs' official record of the treaty proceedings at Point Elliott, there were some 2300 Indians present at the council.

[19]

Given the unprecedented number of people gathered together, the complexity of gathering census data, the adverse weather conditions under which the people were camped and the necessity to communicate with people speaking several different Indian languages, it seems likely that Gibbs might inadvertently fail to list some of the groups in the preamble and equally likely that certain signatures might be overlooked.

The failure to secure signatories from every last group was not a critical issue in the view of the treaty commission. They had devised a plan to insure that all groups were covered in the treaty document. In conformity with the instructions issued to him from Washington City, Stevens had designated four so-called Head Chiefs to represent, for treaty purposes, all the inhabitants of each of the four main drainage systems.

In this way, Seattle's signature on the treaty document was considered by the commission to be binding on all the groups inhabiting the Duwamish watershed and the territory opposite Seattle. Patkanim was designated signatory for all the villages in the Snoqualmie-Skykomish-Snohomish river system. Goliah "signed" for all the people along the Skagit river system. Lastly, Chow-its-hoot was designated as the signer for the Lummi, Samish, and Nooksack.

Gibbs makes it perfectly clear and explicitly states in connection with the Duwamish, that the above plan reflects the administrative operations of the treaty commission and does not reflect ethnographic realities.

With respect to the Nooksack, there is nothing in the record to suggest that in 1855 they were in any way politically subsumed with the Lummi. All of the accounts of that period describe the Nooksack as distinct from the Lummi in language and mode of life.

VI. NOOKSACK IDENTITY IN THE MID 1850's

Information relative to the Nooksack prior to 1855 is fragmentary. Few whites had visited them in their home territory and no extensive description of them prior to 1855 appears to exist.

All of the early accounts and maps describe the Nooksack as living along the Nooksack River inland and upriver from the Lummi. Three principal village sites have been identified: one near the present town of Deming, Washington; a second near Goshen, Washington; and a third near the present town of Everson, Washington. Other settlements in the Lynden area are noted by white settlers in the 1870s. In addition to the winter villages mentioned, there may well have been others for which documentation is not available at present.

Early accounts invariably mention the prairies in Nooksack country where the Indians were raising potatoes at the time of white entry to the area. The accounts also mention the abundance of game and fish in the Nooksack country and their importance in the native economy.

In an effort to learn more about the Indians and the potential of their country, Stevens directed Colonel Fitzhugh, agent in charge of

the Lummi, Nooksack, and Samish Indians in 1856 to report on the area.

Fitzhugh's report, dated January 18, 1857, constitutes the fullest description of the Nooksack and their country for that time.

The report estimates the Nooksack population at about 450.

"The New-sacks. . . . live by the chase, principally around the foot of Mt. Baker. There are hundreds of elk and deer; the rivers abound in salmon trout and sturgeon. They are divided into three bands, under three heads, but all subservient to one Humpklam; he lives at the foot of the mountains and holds supreme command over the whole tribe. The middle band, under Tulliskerum, are situated at Upper Prairie, and the lower band at the large prairie about six miles from Whatcom, or twenty-five by river. The old chief is very religiously inclined, has divine services twice a day, and says he is a friend of the whites, but does not want them to settle in his country. They know the extent of their prairies, and know by the growth of their potatoes that they have the best soil for cultivation in this section, and a better hay or grazing country does not exist than their prairies.

The whites of the Bay have surveyed a road through to their lower prairies, a distance of from sixteen to twenty miles, and have cut out three or four miles. I am in hopes they will not get it through this summer, for I am confident that as soon as any white settlers go there to locate they will drive them out. They say that they are determined not to have their lands taken from them. If the treaty that has been made with them, if any, could be modified so that they could receive value for so much of the land as the United States wants, and give them a reservation in place, so that they would not be entirely out of their element, then, I think, there would be no difficulty; but until then, there will always be more or less trouble. . . ."

[20]

It should be noted that at the time of Fitzhugh's report, the Treaty of Point Elliott had not yet been ratified by the Congress, so the Nooksack were under no legal obligation either to remove from their homeland or to permit others to encroach upon it.

VI. CONCLUSIONS

It is my opinion, on the basis of the foregoing evidence, that the Nooksack were included in the Treaty of Point Elliott and that the

REFERENCES

- [1] Record of proceedings of the commission to hold treaties with the Indian tribes in Washington Territory and the Blackfoot Country, December 7, 1854 - March 3, 1855. National Archives Microcopy No. T-494. The portion referred to here has been introduced as Exhibit PL-14 in U.S. v. Washington, Civil No. 9213, W. D. Washington.
- [2] Annual Report of the Commissioner of Indian Affairs. George Manypenny to Hon. R. McClelland, Secretary of the Interior, November 25, 1854. Washington, 1853-54, page 225.
- [3] National Archives. Records of the Washington Superintendency of Indian Affairs. Letters Sent. Stevens to Manypenny, March 21, 1853.
- [4] National Archives. Records of the Washington Superintendency of Indian Affairs. Letters Received. Acting Commissioner of Indian Affairs Mix to Stevens, August 30, 1854.
- [5] Same as [4] above. The material is quoted as it appears in the original, although it seems obvious from the context that Mix intended to say in the sentence beginning 'The formation of distinct negotiations' . . . would not be as likely.
- [6] Same as [4] above.
- [7] See [1] above. The minutes of the planning meetings of that commission were introduced previously in evidence as Exhibits PL-10(a) and 10(b) in U.S. v. Washington, Civil No. 9213, W. D. Washington.
- [8] These figures are included in a tabular statement on a map which Stevens transmitted to the Commissioner of Indian Affairs, April 30, 1857. That map has been introduced previously as Exhibit PL-66 in U.S. v. Washington, Civil No. 9213, W. D. Washington.
- [9] National Archives. Records of the Washington Superintendency of Indian Affairs. Letters Sent. Stevens to Manypenny, August 30, 1855.
- [10] National Archives. Records of the Washington Superintendency of Indian Affairs. Letters Sent. Stevens to Manypenny, April 30, 1857.

- [11] National Archives. Records of the Washington Superintendency of Indian Affairs. Letters Sent. Stevens to Manypenny, May 5, 1856.
- [12] Same as [1] above. The portion referred to here has been introduced previously as Exhibits PL-10(a) and 10(b) in U.S. v. Washington, Civil No. 9213, W. D. Washington.
- [13] Same as [1] above.
- [14] Same as [1] above.
- [15] Gibbs, George. Notebook No. II, 1854-1855. Cascade Road -- Indian Notes. National Archives Record Group E-198.
- [16] Gibbs, George. Tribes of Western Washington and Northwestern Oregon. Contributions to North American Ethnology, vol. 1, 1877. This has been introduced previously as Exhibit G-4 in U.S. v. Washington, Civil No. 9213, W. D. Washington. The quoted passage is on pages 180-181.
- [17] National Archives. Records of the Washington Superintendency of Indian Affairs. Letters Sent. Simmons to Nesmith, December 31, 1857.
- [18] Same as [15] above.
- [19] Same as [1] above.
- [20] Annual Report of the Commissioner of Indian Affairs. Fitzhugh to Stevens, January 18, 1857.

Department of the Interior
Office of Indian Affairs
August 30, 1854

Sir:

By requisition of this Office, of the 12th instant, the sum of \$10,000 will be placed in your hands, or remitted to you from the appropriation of \$45,000 made by the act of Congress approved July 31st 1854, "for expenses of negotiating treaties with and making presents of goods and provisions to Indian Tribes in the Territory of Washington."

It is the expectation of the Department that the sum appropriated, will prove sufficient to defray all expenses incurred in and incidental to making conventional arrangements designed to be permanent, with all the Tribes and fragments of Tribes within your Superintendency, by which the United States will extinguish their claim of title to all the lands within the Territory, excepting such limited districts as it may be necessary to assign them for their occupancy in future; and I have now to inform you that you have been designated by the President as the Officer of the Indian Department to conduct the negotiations and conclude the treaties of amity and acquisition that are thus provided for.

The remittance of \$10,000 above referred to, was made to enable you to enter upon the discharge of the duty hereby assigned you, so soon as you arrive in Washington Territory, and the funds will be applicable for the purchase of presents, of goods and provisions, and for defraying all expenses of a preliminary and incidental nature connected with the negotiations &c.

In accordance with the request made in your letter of the instant, I have directed the articles of Dry Goods and Hardware embraced in the schedules therewith furnished by you, to be procured from the contractors with this office for Indian Goods, and it is expected that the two lots, one of \$8,000 in value, and one of \$12,000 will be shipped from New York to San Francisco by fast sailing Clipper ship, in a few days, to be forwarded to you, as you requested; \$8,000 to Columbia Barrack, care of the U.S. Quartermaster, and \$12,000 to Olympia. Schedules of the goods thus procured will be transmitted to you at Olympia, and as they will be shipped to the care of the Collector at San Francisco, you will correspond with him, as to the more safe, speedy, & proper way of landing them thence to their respective destinations.

In concluding articles of agreement and convention with the Indian Tribes in Washington Territory, you will endeavor to unite the numerous bands and fragments of tribes into tribes, and provide for the concentration of one or more of such tribes upon the reservations which may be set apart for their future homes.

The formation of distinct negotiations with each of the forty or fifty separate bands of Indians in Washington Territory, would be as likely to promote the best interests of the White settlers or of the Indians, as if the latter could be concentrated on a limited number of reservations, or on contiguous reservations in a limited number of districts of country apart from the settlements of the Whites.

Unless some such arrangement can probably be affected, you will at present, conclude treaties with such tribes or bands only, as are located immediately adjacent to the settlements of the Whites, and between whom and our own citizens animosities prevail, or disturbances of the peace are reasonably apprehended. And in entering upon the execution of the duty with which you are hereby charged, you will turn your attention first to such tribes and bands.

It is desirable that the stipulations to be fulfilled annually on the part of the United States, be few in number, and that the Department retain the authority to apply the funds to a variety of objects, such as the circumstances of the Indians at the time of payment may require.

This suggestion you will regard particularly if you are unable to effect the combination of all the Bands into six or eight Tribes, or to arrange half a dozen treaties or less, so that every one of the tribes shall be a party to one of them.

It is not deemed necessary to give you specific instructions as to the details of the treaties. I however enclose to you herewith, copies of the treaties recently concluded by Supt Palmer, at Table Rock and Cow Creek, Oregon Territory, with the Rogue River and Cow Creek Indians and the printed copies of treaties lately concluded at this city with the Omaha & Ottoe & Missouriia Indians.

Those negotiated by Supt Palmer are regarded as exhibiting provisions proper on the part of the Government & advantages to the Indians, and will afford you valuable suggestions. Those with the Omahas & Ottoes & Missouriias, will indicate the policy of the Government in regard to the ultimate civilization of the Indian Tribes, the graduation of annuity payments to them, the encouragement of schools and missions among them, the exclusion of ardent spirits from their settlements, the security to be given against the application of their annuity funds for payment of debts and claims; the terms on which roads & railroads may be constructed through their reservations, and the authority proper to reserve to the President, of determining the manner in which annuities of Indians shall be applied for their benefit.

I would here remark, that the amounts secured to Tribes in Nebraska will not be a criterion for you, in regard to the amount of the annual or other payments to be made to Tribes in Washington, under stipulations of the proposed Treaties, in as much as the former held lands which had become valuable by reason of their proximity to the State of Iowa, whilst the latter have claims of title based on occupancy alone, and that occupancy of a nature not fixed, and well defined as to boundaries, and the

lands which they claim are far removed from the portions of the Country which have been long settled, & highly improved and cultivated.

I would also refer you to the late annual report of this Office, and the last annual report of the Secretary of the Interior, from which you will perceive that it is regarded by the Department as the best policy to avoid, as far as it can be judiciously done, the payment of Indian annuities in money, and to substitute implements of agriculture, stock, goods, and articles necessary to the comfort and civilization of the Tribes.

You will bear in mind the distance that separates you from the Capitol, and the time which must elapse from the negotiation of treaties until you hear of the action of the President and Senate upon them; and you will hence caution the Indians against expecting the first payments of annuities too soon after the conclusion of negotiations.

You will at your early convenience, furnish to this Office a Skeleton Map of Washington Territory, showing the location of the different tribes and bands, and the boundaries of the regions respectively claimed by each; and as treaties are concluded from time to time, in your reports accompanying them, furnish a description of the reservation provided for the occupation of the Indians, with such precision, that it may be marked on a map here.

With these general views, you will nevertheless exercise a sound discretion, where the circumstances are such as to require a departure from them; and you will take care, in all treaties made, to leave no question open, out of which difficulties may hereafter arise, or by means of which the Treasury of the United States may be approached.

It is expected that a due regard to economy will govern all your acts, and that you will promptly report progress, in the execution of the trust now confided to you.

Very Respectfully
Your Obedt Servt
Charles E. Mix,

Acting Commissioner

His Excellency

Isaac I. Stevens

Governor of Washington Territory
Present.

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Census at Camp July. 16. 1856. This after-
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Isithonish	men & boys	172
	women & girls	160
Lummi	Total	271
Stook-sahk	Total	256
Kikiak's	men	30
	boys	40
	women & girls	70
Squinamish	men	22
	women	30
	boys & girls	17
	children	13
Towah-hah	men & boys	30
	women & girls	30
Skagits	men	112
	women	140
	children	97
	Absent	52
Alle. si. qui gwö. lis	men	20
	women	24
	children	24
Swinamish	men	42
	women	30
	children	41
	Absent	13
Pro. que cha. mish	men	40
	women	20
	children	20
	Absent	38
Samish	men & boys	55
	women & girls	58
Sto. qual. moo	men	154
	women	182
	boys & girls	297